

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 409 of 1986

with

CIVIL APPLICATION No 2952 of 1986

with

APPEAL FROM ORDER No 361 of 1986

with

CIVIL APPLICATION No 2565 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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POLYOLEFINE INDUSTRIES LTD.

Versus

MUNICIPAL CORPORATION OF A'BAD

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Appearance:

1. Appeal from Order No. 409 of 1986

MR KS JHAVERI for Appellant

MR PG DESAI for Respondent

2. Appeal from Order No 361 of 1986

MR NA PANDYA for Appellant

SERVED for Respondent

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 28/08/97

ORAL JUDGEMENT

Both these appeals are directed against two separate orders, both dated September 12, 1986, passed by the City Civil Court, Ahmedabad, below Notice of Motion in two respective suits being Civil Suit Nos. 4999 of 1985 and 232 of 1986.

2. The plaintiffs in the above suits have challenged the notices issued by the respondent-Corporation under section 268 of the BPMC Act, which have been issued on the ground that the respective plaintiffs have occupied the building in contravention of section 263 of the Act i.e. without obtaining the building use permission. The trial court initially granted ad-interim injunction. However, after hearing the parties, the trial court dismissed the Notice of Motion and vacated the ad-interim relief. When Appeal From Order No. 409 of 1986 came up for hearing, it was ordered to be admitted and ordered to be heard with A.O. Nos. 361 and 362 of 1986.

3. Today, the appeals have come up for final hearing. Since the appeals are pending for the last about 12 years, but no action has been taken by the respondent-Corporation in respect of the premises in question, even in absence of any operative interim relief, the Court has thought it fit not to go into merits of the matter, but rather to direct the trial court to hear and decide the suits by March 31, 1998. Since no action has been taken by the respondent-Corporation so far, the apprehension that the Corporation may take any action if the interim relief is not granted during pendency of the suits, does not appear to be well founded.

4. In view of the above discussion, it would be just and proper to give the following directions:-

(i) The trial court shall hear and decide Civil Suits Nos. 4999 of 1985 and 232 of 1986 latest by March 31, 1998.

(ii) In case, the respondent-Corporation proposes to take any action against the plaintiffs in respect of the suit properties, the respondent-Corporation shall give a fresh notice to the plaintiffs and then it will be open to the plaintiffs to approach the trial court for appropriate interim relief on the basis of any amendment to building bye laws or any other relevant aspects including the fact that these suits are now ordered to be heard and decided by March 31,

1998.

5. The appeals are accordingly disposed of subject to the aforesaid clarifications and directions.

6. Since the main appeals are disposed of, the respective Civil Applications do not survive and are disposed of with no order as to costs. Rule is discharged in Civil Application No. 2952 of 1986.

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